

# Supreme Court of Kentucky

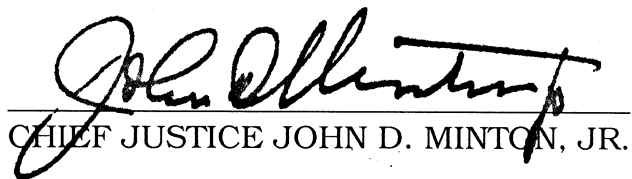
## ORDER

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND  
PROCEDURE FOR THE 12TH JUDICIAL CIRCUIT, HENRY,  
OLDHAM, AND TRIMBLE COUNTIES**

Upon recommendation of the Chief Circuit Judge of the 12th Judicial Circuit, Henry, Oldham, and Trimble counties, and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the 12th Circuit, Henry, Oldham, and Trimble counties, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this Court.

Entered this the 21<sup>st</sup> day of May 2012.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

## **RULE I CITATION OF RULES:**

These rules may be cited as Local Rules of the Twelfth (12) Judicial Circuit, and shall be effective **September 1, 2012**, pending approval by the Chief Justice.

## **RULE II MOTION PRACTICE:**

### **2.1 MOTION DAYS**

Motion Days are classified as Civil and Criminal and, as a general rule, are held within each county within the Circuit on the following schedule:

#### **(A) CIVIL MOTION DAYS**

- (1) Henry: 9:00 a.m. 2<sup>nd</sup> Thursday, 4<sup>th</sup> Friday
- (2) Oldham: 1:00 p.m. 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> Fridays
- (3) Trimble: 9:00 a.m. 1<sup>st</sup> Friday  
1:00 p.m. 3<sup>rd</sup> Thursday

#### **(B) CRIMINAL MOTION DAYS: (all held in originating county unless otherwise specified)**

- (1) Henry: ~~9am & 1pm 2<sup>nd</sup> Thursday~~  
**9am & 1pm 2<sup>nd</sup> Thursday, even months**  
**9am ONLY 2<sup>nd</sup> Thursday, odd months**
- (2) Oldham: **9am & 1pm 1<sup>st</sup> Thursday;**  
~~9:00 a.m. 3<sup>rd</sup> Thursday~~  
**1pm ONLY 2<sup>nd</sup> Thursday, odd months**  
**1pm ONLY 3<sup>rd</sup> Thursday, even months**
- (3) Trimble: ~~1:00 p.m. 3<sup>rd</sup> Thursday~~  
**9am & 1pm 3<sup>rd</sup> Thursday, odd months**  
**9am ONLY 3<sup>rd</sup> Thursday, even months**
- (4) Reformatory: ~~8:30 a.m. 3<sup>rd</sup> Thursday "Reformatory Docket"~~  
**1pm ONLY 2<sup>nd</sup> Thursday, odd months**  
**1pm ONLY 3<sup>rd</sup> Thursday, even months**

meaning **All** Defendants held in state facilities  
(KSR, Roederer, KSP, etc.) Henry, Oldham & Trimble cases. **All**  
held in Oldham County, due to security issues.

### **2.2 TIME CALCULATIONS: Unless otherwise specified, all days are calendar days.**

## 2.3 MOTION RULES

(A) All motions shall be scheduled for Motion Day, except as follows:

- (1) Motions for default judgment.
- (2) Prisoner cases.
- (3) Motions for the Court in which all parties waive service and notice requirements under CR 53.06.

(B) All other motions and notice thereof shall be "served" at least (7) days prior to the time specified for the hearing/motion hour, except for good cause shown. Motions shall be "filed" no later than 4:00 p.m. per the following schedule:

- (1) For Motion Hour on a **Monday**, the **preceding Wednesday**;
- (2) For Motion Hour on a **Tuesday**, the **preceding Thursday**;
- (3) For Motion Hour on **Thursday**, the **preceding Monday**;
- (4) For Motion Hour on **Friday**, the **preceding Tuesday**.

In the event the Courthouse is closed on the any of the above days, for holiday or other reasons, by 4:00 p.m. the next business day.

(C) No pleadings shall be "faxed" to the Circuit Clerk and the Clerk is instructed not to accept faxed pleadings.

(D) If counsel is directed to prepare an order, it shall be done and left at the Clerk's office within ten (10) days of the ruling.

(E) Criminal motions shall be filed in the appropriate county and heard in that county unless otherwise ordered by the Court. All Henry & Trimble Criminal Motions shall be copied to the Court's office at: 100 W. Main Street LaGrange, KY 40031.

(F) Civil motions shall be docketed and heard in the county where the action is filed unless:

- (1) The matter is of an emergency nature and pre-approved with the court;
- (2) The Court orders otherwise.

(G) Counsel shall attach a Proposed Order with regard to any motion filed.

## **2.4 SUMMARY JUDGMENT MOTIONS, MOTIONS TO DISMISS, MOTIONS TO STRIKE, AND RULE 12.02 MOTIONS**

- (A) Motions to dismiss, for judgment on the pleadings and for summary judgment shall be filed with a memorandum of authority. An opposing party shall have twenty (20) days from the certification date on the motion in which to respond. No reply by the movant shall be allowed without leave of the Court or agreement of record of all parties. Prior to notice of submission, counsel may request oral argument by motion. Counsel shall then issue Form AOC 280, Notice of Submission of Case for Final Adjudication, at which time the case shall stand submitted. The Clerk shall bring the case to the Court's attention.
- (B) This rule shall not apply to motions to dismiss prisoner cases, which shall be submitted directly to the Court pursuant to Rule 2.2 (A)(2).

## **2.5 DEFAULT JUDGMENT MOTIONS**

- (A) Default judgment motions shall be filed in accordance with the Rules of Civil Procedure. Appearance in court by counsel is not required on these motions.
- (B) In regards to Military Affidavits, the Court will accept only an affirmative statement as to military service, which complies with the Service Members' Civil Relief Act, 50 U.S.C. App. 501 et.seq.

## **2.6 DISCOVERY, DEPOSITIONS, CASE LAW**

- (A) Originals of depositions shall not be filed in the Court record. The attorney who noticed the taking of a deposition shall be custodian of the record for the original deposition (and video tape, if one is taken), and shall present it when directed by the Court or any party involved in the proceedings. If ordered by the Court, relevant pages of a condensed deposition transcript shall be filed in the record if the deposition is the subject of any motion before the Court.
- (B) Case law may be tendered to the Court, although the Clerk shall not file it in the record as an "attachment" unless the Court specifically orders it.
- (C) The use of video-taped depositions at trial is permitted pursuant to Kentucky Rules of Civil Procedure, provided the videography is performed by a certified court reporter/videographer.

## **III. RULES IN CRIMINAL CASES**

### **3.1 GRAND JURY**

The Grand Jury will meet regularly in each county of the 12<sup>th</sup> Judicial District on the following schedule

|               |   |                      |
|---------------|---|----------------------|
| Oldham County | <del>1<sup>st</sup> Thursday of the month</del> | <del>9:00 a.m.</del> |
| Henry County  | <del>2<sup>nd</sup> Thursday of the month</del> | <del>9:00 a.m.</del> |

~~Trimble County 3<sup>rd</sup> Thursday of the month 1:00 p.m.~~

|                  |                                     |           |
|------------------|-------------------------------------|-----------|
| Oldham County-   | 2 <sup>nd</sup> Friday of the Month | 9:00 a.m. |
| Henry County –   | 4 <sup>th</sup> Friday of the Month | 8:15 a.m. |
| Trimble County - | 1 <sup>st</sup> Friday of the Month | 8:15 a.m. |

Monthly sessions are subject to change by specific notice from the Commonwealth. Unless otherwise specifically instructed, Defendants do not need to be present when the Grand Jury meets.

### **3.2 CONTINUATION OF BOND AND SCHEDULING ARRAIGNMENT.**

- (A) Bond decisions (including Monitored Conditional Release) from the District Court will continue until arraignment in Circuit Court, subject to the conditions contained in RCr 4.42 and 4.54. In the event a Defendant is bound over to the Circuit Court after Preliminary Hearing, control over bail taken by the District Court shall pass immediately to the Circuit Court.
- (B) Arraignment will be scheduled as follows:
- (1) All defendants in custody, held to answer solely on the new indictment(s) shall be arraigned at the first available motion hour, regardless of County of arrest or County conducting Motion Hour.
  - (2) For defendants not in custody, arraignment will be scheduled on the regular motion hour, for the county of indictment that occurs no sooner than 14 days after indictment. In no event will the arraignment occur later than 60 days following indictment.
  - (3) Any attorney, needing special arrangements for arraignment of an out of custody defendant, should contact the office of the Commonwealth Attorney.

### **3.3 GUILTY PLEAS**

- (A) On a plea of guilty at any stage of the proceedings the defendant shall:
- (1) File a written Plea Agreement in open court; and
  - (2) File a Motion to Enter a Guilty Plea, signed in open court.
- (B) A plea of guilty, with a recommendation from the Commonwealth, may be entered at any time before trial but only if the Court and Clerk are notified of such by the close of the second business day prior to trial so that the jury may be properly notified. If not, a plea of guilty must be to the Indictment as charged, and no amendments or plea bargaining will be approved except for good cause shown.

### **3.4 TIMING AND NOTICE OF GUILTY PLEAS**

- (A) In order to allow the Clerk to properly summon a jury and to avoid summoning a jury needlessly, Counsel for the defendant and the Commonwealth shall certify to the Court and the Clerk no later than 2 business days prior to the trial that there will be no plea.
- (B) The Court may waive this rule for good cause shown. For purposes of this rule only, a teleconference with the Court and Counsel may be held prior to the date of trial. The Court's notes shall serve as the official record of that teleconference, subject to any supplemental pleadings necessary to clarify the record. To request a good cause exception on the Trial date, the Defendant and both Counsel shall be present in open Court.

### **3.5 TRANSPORTATION-INCARCERATED DEFENDANTS/WITNESSES**

- (A) If a defendant is not in state or federal custody, the jailer and/sheriff of the county in which the case is pending shall transport incarcerated defendants for arraignments, trials, and sentencing, as indicated on the Court docket. If a defendant is in state or federal custody, the Court shall issue the transport order for all appearances.
- (B) In order to avoid needless delays, Counsel for a defendant held in state or federal custody should advise the Court, or the Court's secretary, at the first available opportunity, and in no event later than five (5) days prior to the scheduled hearing, of the facility where the defendant is housed. Counsel should likewise advise the Court, or the Court's secretary, of any changes in the place of custody that occur between court dates, with the same 5 day limitation. Failure of defense counsel to timely notify the Court of the proper location to which to send the transport order may result in the rescheduling of the case to a later date and shall be considered good cause for all purposes.
- (C) If any subpoenaed witness is incarcerated, the party on whose behalf the witness is to testify shall submit a transport order, with appropriate times and places, to the Court at least five (5) days in advance of the desired appearance.

### **3.6 DISCOVERY PROCEDURES**

- (A) The 12<sup>th</sup> Judicial Circuit maintains an "open file" discovery procedure. It is not necessary for Counsel for the Defendant to file a discovery motion to begin the discovery process. Counsel may timely write the Commonwealth Attorney and request either initial Discovery or a copy of the Grand Jury proceedings or both. Counsel for the Defendant shall make necessary arrangements with the Commonwealth regarding any costs associated with providing discovery or the Grand Jury tape.
- (B) Additional and or Supplemental discovery can be requested using this same procedure and will be provided subject to agreement of the parties.
- (C) In the event that the defendant desires additional information not covered by the informal "open file" procedure and the Commonwealth is either not in agreement

that the information is discoverable , or is not discoverable from the Commonwealth or it's agents, Counsel for the Defendant may file a formal discovery request to be heard by the Court.

### **3.7 PRETRIAL CONFERENCE**

- (A) The 12<sup>th</sup> Judicial Circuit will schedule one pretrial conference in all cases where requested by Counsel for either party. This initial Pretrial Conference will generally be scheduled approximately 60 days after arraignment. This schedule can be altered by agreement of the parties or by the Court on request.
- (B) At this conference, the Parties shall advise the Court as to discovery, plea negotiations, and the general status of the cases. Motions should be scheduled to be heard, on proper notice at this conference. The Court may hear the motions at that time or may reschedule, after consultation with the parties, to a more convenient time certain.
- (C) Additional Pretrial Conferences may be scheduled by agreement of the parties, or by the Court as necessary.

### **3.8 SCHEDULING TRIALS**

The Court will schedule a Trial Date at Arraignment, on the request of either party. The Court may delay the scheduling of a trial date until a later pretrial Conference either by agreement of the parties or, in the absence of a demand, where justice requires. Rescheduling a previously set Trial Date will be in accordance with Kentucky law and practice.

### **3.9 SHOCK PROBATION**

- (A) Counsel requesting Shock Probation shall file the appropriate Motion pursuant to K.R.S. 439.265.
- (B) On the scheduled date for the motion, the Court may either take the Motion under submission or may, in the Court's discretion, schedule a hearing.
- (C) Defendants will not routinely be transported for the initial hearing date. Only if, in the Courts discretion, a hearing is scheduled, will the defendant be transported to Court consistent with Rule 3.20.

## **RULE IV. GENERAL RULES:**

### **4.1 DIGITALLY RECORDED VIDEOTAPE PROCEDURES**

All trials and hearings in the Circuit Court shall be recorded ~~by video tape~~ digitally unless otherwise ordered. Copies of any ~~video taped~~ digitally recorded proceeding

should be requested through the Circuit Clerk's Office with payment for any fees assessed by the Clerk.

## **4.2 EXPARTE COMMUNICATIONS**

With the exception of actions for emergency relief or temporary restraining orders, there should be no ex parte communication with the Judge by counsel or parties in criminal or civil actions. Attorneys should advise their clients of the inability of the Court to discuss pending matters. Upon agreement of the parties in advance, and generally on issues such as scheduling or bond modification, either side may approach the Court on the agreed upon issue only.

## **RULE V. MEDIATION:**

### **5.1 CASES FOR MEDIATION**

All civil cases will be referred to mediation before an assignment of a trial date, except for prisoner cases or election contest or unless otherwise ordered by the Court.

### **5.2 REFERRAL TO MEDIATION**

- (A)** The judge will prepare the appropriate order to refer the case to mediation with or without the consent of the parties. Cases shall be referred to a mediator approved by the Court. The procedures used during the mediation shall be set by the mediator.
- (B)** Any party may move to enter an order disqualifying the mediator for good cause. If the Court rules that a mediator is disqualified from mediating the case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

### **5.3 MEDIATION CONFERENCES**

- (A)** The parties shall contact the mediator within seven (7) days from the entry of the order to schedule a mediation conference, which shall be held within sixty (60) days from the entry of the order, unless a different deadline is specified.
- (B)** The parties shall attend a mediation conference(s). Counsel may also be present. Such a conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator and the parties determine may aid in the handling or disposition of the proceedings



- (C) If a party fails to appear at a duly noticed mediation conference without good cause, the Court, upon motion, shall impose sanctions, which may include an award of attorney fees and other costs against the party failing to appear. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to, the appropriate decision making body of the entity. In all other cases, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

- (1) The party, or on behalf of a public or corporate entity, a representative other than the party's counsel of record having full authority to settle without further consultation; and
- (2) A representative of the insurance carrier for insured party who is not such a carrier's outside counsel and who has full authority to settle without further consultation.

The party's counsel of record, if any, may also be present.

#### **5.4 CONFIDENTIALITY**

- (A) Except as otherwise provided by this rule or ordered by the Court for good cause shown, all mediation documents and mediation communications are confidential and shall not be disclosed. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.
- (B) No part of the mediation proceedings shall be considered a public record.
- (C) There is no confidentiality and restriction on disclosure under this rule to the extent that:
- (1) All parties consent in writing to disclosure; or
  - (2) The mediation communication or mediation document gives the mediator or persons associated with the mediator's office, knowledge of or reasonable cause to suspect that a child or a spouse has been abused or a child has been neglected; or
  - (3) The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud.
  - (4) Nothing in this rule shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

#### **5.5 MEDIATION REPORTS**

- (A) The mediator shall notify the Court promptly when a case is not accepted for mediation.

- (B) At any time after a case has been accepted, the mediator may refer it back to the Court for good cause, which shall be in writing.
- (C) If a case is settled prior to or during mediation, an attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in; any other case.
- (D) If some, but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within ten (10) days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.
- (E) At the conclusion of the cases accepted for mediation, the mediator will report to the Court the fact that the mediation process has ended. If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of agreement to the Court without comment or recommendation, except that the mediator shall notify the Court if a party has acted in bad faith during the mediation process. With the consent of the parties, the mediator's report may also identify any pending motions, outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate settlement.

## **VI. MASTER COMMISSIONER:**

### **6.1 GENERAL REQUIREMENT**

The Master Commissioner of the Oldham and Henry/Trimble Circuit Court shall not set sale dates until the party requesting the sale date has provided the following:

- (1) A pre-sale deposit to help cover the estimated costs of each sale in the amount of Five Hundred Dollars (\$500.00);
- (2) A legal description of the property to be sold with a street address, if available;
- (3) Judgment and Order of Sale showing the name and address of each person or entity who is to be served notice by the Master Commissioner;
- (4) The name of the party or parties whose interest is being sold or conveyed.
- (5) The source of title of the party or parties whose interest is being sold or conveyed.

All owners (including owners and taxing authorities of unpaid delinquent taxes and unpaid taxes) who have a claim or interest in the property shall be made parties to the action and duly served with process.

## **6.2 MOBILE HOMES**

- (1) If a mobile home, or other structure requiring a certificate of title, is located on the property, it shall be noted in the Complaint and Judgment and Order of Sale along with the year, make, model and VIN of said mobile home. It shall be stated whether the mobile home or other structure is a part of or affixed to the real estate or titled separately. The Master Commissioner shall not set a sale date until this information has been provided.
- (2) If it is known that a mobile home is located on the real estate, then the record title holder and lien holder, if different from the record owner of the real estate shall be made a party to the action.

## **6.3 JUDGMENTS AND ORDERS OF SALE**

The terms of sale to be stated in all Judgments and Orders of Sale and are as follows:

- (1) The terms of the sale shall be either full cash or \$5,000.00 in the form of a cash deposit certified check or money order at the time of sale and balance of the purchase price on a credit of thirty (30) days. If the purchaser elects to take credit for the balance, then the purchaser will be required to post bond and furnish acceptable surety thereon at the time of the sale. Said bond shall be for the unpaid balance of the purchase price and bear interest at the rate of twelve (12%) percent per annum from the date of the sale until paid.
- (2) The purchaser is responsible for the satisfaction of all unpaid taxes, due and owing, delinquent and current, levied against the subject property, including taxes purchased by a third party, under section 6.3(2) herein. Thus, purchaser shall provide proof by affidavit that all such taxes have been paid (or that none are due or owing) before the master commissioner executes and delivers the deed to the property.
- (3) The property shall be sold free and clear of any right, title or interest of all parties to the action and all liens and encumbrances thereon of any party except those who may be listed as exceptions per the Judgment and Order of Sale, i.e. "sold subject to", priority liens, etc.. The sale of the real estate shall be made subject to all zoning and building regulations, restrictions, ordinances, easements, covenants, and rights-of-way, of record or otherwise.
- (4) Within a reasonable time after the sale the Master Commissioner shall file in Court his report of the sale and serve a copy on each party entitled to notice. Any party taking exception to the Report of Sale shall, within ten (10) days from filing of Report of Sale, file in Court and serve a copy of his exceptions on all parties entitled to notice, and on the Master Commissioner. If no exceptions are filed within the 10 day period, the Court shall enter an Order confirming the sale. If exceptions are filed the Court shall set a date for a hearing on the exceptions.

#### 6.4 ORDERS OF DISTRIBUTION:

- (1) All motions for proposed "Orders of Distribution" shall be set for motion hour, and served upon non-defaulting parties and the Master Commissioner, with notice. The Court requests the Master Commissioner appear and object if the proposed Order of Distribution is incorrect, or, in the alternative, serve written notice of any error prior to the date set for Motion Hour.
- (2) Orders of Distribution of funds held by the Master Commissioner shall set forth the amounts collected, including the advance costs deposit referenced in 6.10(1) above. All fees and costs must be itemized on the Order of Distribution.
- (3) If disbursements are to be made to a taxing authority, then the taxing authority with the outstanding tax bill number and year must be listed in the Order of Distribution and copy of the tax bill or bills must be furnished to the Master Commissioner.
- (4) The preparation of the Order of Distribution shall be the responsibility of the lien holder of first priority. All subsequent lien holders have the responsibility of requesting distribution of any remaining funds they may be entitled to, after entry of appropriate judgment.

Dated: May 11 2012

  
**KAREN A. CONRAD, CHIEF CIRCUIT JUDGE**  
**DIVISION I, 12<sup>TH</sup> JUDICIAL CIRCUIT**